



U.S. Department
of Transportation
**Federal Transit
Administration**

REGION IX
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RM Draft 3/4/10

Mr. Kenneth T. Hamayasu
Chief, Rapid Transit Division
City and County of Honolulu
650 South King Street, 3rd Floor
Honolulu, Hawaii 96813

Dear Mr. Hamayasu:

Thank you for your letter dated February 8, 2010, regarding the design-build (DB) contract between the City and County of Honolulu (the City) and Kiewit Pacific Company (Kiewit). The letter notifies the Federal Transit Administration (FTA) of the City's intent to proceed with a second notice-to-proceed (NTP #1A) for three additional work activities under this contract. It also provides some detail on the 35 work activities that the City authorized under the initial notice-to-proceed (NTP #1). FTA understands that activities authorized by these NTPs are being implemented prior to issuance of an FTA Record of Decision (ROD) that will conclude the National Environmental Policy Act (NEPA) review for the proposed project. Your letter states the City's intention to issue NTP #1A to Kiewit by February 22, 2010. We understand this has not happened.

The City is reminded that it may advance only those activities that are consistent with the applicable FTA guidance on DB contracts initiated prior to completion of NEPA (Federal Register, Volume 72, No. 12, page 2583; January 19, 2007). The City has not requested FTA approval prior to issuance of the RFP or award of the DB contract, nor has the City asked FTA to assess the eligibility of activities to be undertaken under NTP#1 or NTP#1A. The City is reminded that it proceeds with these activities at its own risk and should carefully monitor contract activities and document strict compliance with FTA requirements.

FTA is aware the Keiwi DB contract includes target dates for NTPs for post-NEPA activities. FTA is also aware the City is preparing and soliciting proposals for other activities such as the maintenance facility construction and vehicle procurement. At the time the DB contract was awarded, the City anticipated completion of the NEPA process by the end of calendar year 2009. Obviously that has not occurred. The completion of environmental review under NEPA and FTA's issuance of a ROD is dependent upon the satisfactory resolution of all outstanding issues including, but not limited to, concerns arising from the current Aolele Street alignment at the Honolulu International Airport. We now anticipate these airport related issues will require extensive study and consultation with our cooperating agency, the Federal Aviation Administration. Under these circumstances, further procurement actions to advance the project may not be warranted at this time. Indeed, the City must continue to ensure that work approved

under the Kiewit DB contract is managed in a way that responds to these schedule realities, and to requirements and restrictions on FTA project activities as set forth in FTA guidance on PE activities and DB contracts, thereby avoiding actions that would jeopardize federal funding for the project.

If you have any questions about this matter, please contact our Regional Counsel, Ms. Renee Marler. Ms. Marler can be reached at 415--744-2736.

Sincerely,

Leslie T. Rogers
Regional Administrator